

**UNITED STATES COURT OF APPEALS**

**June 17, 2005**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

MARLON D. JACKSON,

Petitioner-Appellant.

v.

RAY ROBERTS, Warden, El Dorado  
Correctional Facility, and  
ATTORNEY GENERAL OF  
KANSAS,

Respondents-Appellees.

No. 05-3037

(04-CV-3331-SAC)

(D. Kansas)

**ORDER**

Before **EBEL**, **McKAY**, and **HENRY**, Circuit Judges.

After examining Petitioner's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a *pro se* 28 U.S.C. § 2254 prisoner appeal. Petitioner was convicted by jury of first-degree felony-murder. Petitioner's subsequent appeal to the Supreme Court of Kansas was denied and his conviction was upheld. Petitioner then filed a § 2254 petition for habeas corpus relief with the United States District Court for the District of Kansas. In that petition, Petitioner alleged

constitutional error in his state court conviction.

The district court dismissed the petition as time barred under AEDPA's one-year statute of limitations. The district court also declined to grant Petitioner a certificate of appealability. Petitioner has renewed his request for a certificate of appealability with this court. The issues he raises on appeal are identical to those brought before the district court.

In order for this court to grant a certificate of appealability, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citations and quotations omitted). When a habeas petition is denied by the district court for procedural reasons, as is the case here, Petitioner must clear the added hurdle of showing "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

We have carefully reviewed Petitioner's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's filing raises an issue which meets our standards for the grant of a certificate of appealability. For substantially the same reasons as set forth by the

district court in its December 17, 2004 Order, we cannot say that it is “debatable whether the district court was correct in its procedural ruling.” *Id.*

We **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay  
Circuit Judge